IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4296 of 2006

The Tata Power Co. Ltd. Petitioner
Vs.
Mr.Hemchandra Bhalchandra Kale & anr. Respondents

Mr.K.M.Naik with Mr.S.P.Salkar for petitioner.

CORAM: B.H.MARLAPALLE,J.

August 17, 2006.

P.C.

1. Heard Mr.Naik with Mr.Salkar, the learned counsel for the petitioner. This petition arises from an interlocutory order passed by the Labour Court at Mahad holding that the domestic enquiry conducted against the respondent-employee was not fair and proper and the findings of the enquiry officer were perverse.

2. The respondent-employee was working as an Asst. Storekeeper, Generating Section of the petitioner-company and on 6th October 1994 he was issued a charge-sheet. It appears that he was sanctioned a housing loan of Rs.1,95,000/- and the last instalment was disbursed on 9/3/1993. He was charged that the loan amount was misused in asmuchas the sanctioned amount was not utilised for purchase

of the flat mentioned in the application for housing loan and, therefore, he was charged of theft, fraud or dishonesty in connection with the business or property of the employer.

3. In reply the employee submitted that initially when he had applied for housing loan he had entered into an agreement with the builder at Pune to buy a flat but the said agreement had to be cancelled and he purchased a flat at Dombivli. The employer proceeded to conduct an enquiry and the enquiry officer found the employee guilty.

4. The Labour Court held the enquiry to be vitiated mainly on two grounds viz. the employee was insisting to conduct the enquiry in Marathi and this request was not accepted and the enquiry was conducted in English and the workman had demanded copies of investigation and verification report and the same were not made available to him. The enquiry officer did not direct the management's representative to produce the same on record. The Labour Court also expressed its opinion about the findings recorded by the enquiry officer while holding that the charge was proved.

5. The learned counsel for the petitioner has relied upon the decision of the Karnataka High Court in the case of Management of Siruguppa Sugars and Chemicals Ltd. v. C.S.Mohan & anr. **[2002 III CLR 911]** and also the clauses of the Standing Orders. The learned counsel urged that the petition against the interlocutory order also requires to be entertained by relying upon the decision of the Karnataka High Court in the case of C.S.Mohan (Supra). In the impugned order itself the learned Judge of the Labour Court has called upon the company to prove the misconduct and to substantiate the proposed punishment of dismissal. It is thus clear that the employer has an opportunity to lead evidence before the Labour Court and prove the charge of misconduct. The findings of the Labour Court that the enquiry was vitiated on two counts viz. it was not conducted in Marathi and the documents asked for were not supplied to the workman do not call for any interference under the supervisory powers of this Court. The interlocutory order does not decide a preliminary issue which goes to the root of the matter. If there is an issue regarding the status of the employee concerned viz. whether he is a workman

or not, it may be an issue going to the root of the case but the enquiry having been declared as vitiated is not an issue which goes to the root of the matter. It is well settled that when the employer has an opportunity to prove the charges afresh by leading evidence before the Labour Court, the challenge to the interlocutory order holding that the enquiry was vitiated need not be entertained. It is also made clear that once the enquiry is conducted before the Labour Court by leading oral and documentary evidence, the findings recorded in respect of the enquiry officer's opinion need not come in the way of the Labour Court in deciding the employer's case as well as the issue of proportionality of the proposed punishment of dismissal.

6. Hence the challenge to the interlocutory order is devoid of merits and the petition must fail at the threshold. The petition is hereby rejected summarily.

(B.H.MARLAPALLE,J.)